

1 BILL LOCKYER, Attorney General
of the State of California
2 PAUL C. AMENT, State Bar No. 60427
Deputy Attorney General
3 For E. A. JONES III
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2543
6 Facsimile: (213) 897-1071
7 Attorneys for Complainant

8
9 **BEFORE THE**
10 **PHYSICIAN ASSISTANT COMMITTEE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 1E-2003-145114

15 DAVID NIKNIA
1314 Laurel Way
16 Beverly Hills, California 90210

A C C U S A T I O N

17 Physician Assistant License No. PA-14826

Respondent.

18 Complainant alleges:

19 **PARTIES**

- 20 1. Richard L. Wallinder, Jr. (Complainant) brings this Accusation
21 solely in his official capacity as the Executive Officer of the Physician Assistant
22 Committee, Department of Consumer Affairs.
- 23 2. On or about February 4, 1999, the Physician Assistant
24 Committee issued Physician Assistant License Number PA-14826 to David NIKNIA
25 (Respondent). The Physician Assistant License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on March 31, 2005, unless
27 renewed.
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1 "(2) When the standard of care requires a change in the diagnosis, act, or
2 omission that constitutes the negligent act described in paragraph (1), including,
3 but not limited to, a reevaluation of the diagnosis or a change in treatment, and
4 the licensee's conduct departs from the applicable standard of care, each
5 departure constitutes a separate and distinct breach of the standard of care.

6 "(d) Incompetence.

7 "(e) The commission of any act involving dishonesty or corruption
8 which is substantially related to the qualifications, functions, or duties of a
9 physician and surgeon.

10 "(f) Any action or conduct which would have warranted the denial of a
11 certificate."

12 6. Title 16, California Code of Regulations, section 1399.521 states:

13 "‘In addition to the grounds set forth in Section 3527, subd. (a), of the
14 code the committee may deny, issue subject to terms and conditions, suspend,
15 revoke or place on probation a physician assistant for the following causes:

16 “(a) Any violation of the State Medical Practice Act which would
17 constitute unprofessional conduct for a physician and surgeon.

18 “ . . .

19 “(e) Performing medical tasks which exceed the scope of practice of a
20 physician assistant as prescribed in these regulations.”

21 7. Title 16, California Code of Regulations, section 1399.540 states:

22 “A physician assistant may only provide those medical services which he
23 or she is competent to perform and which are consistent with the physician
24 assistant’s education, training, and experience A physician assistant shall
25 consult with a physician regarding any task, procedure or diagnostic problem
26 which the physician assistant determines exceeds his or her level of competence
27 or shall refer such cases to a physician.”
28

1 8. Section 14124.12 of the Welfare and Institutions Code states, in
2 pertinent part:

3 “(a) Upon receipt of written notice from the Medical Board of
4 California, the Osteopathic Medical Board of California, or the Board of Dental
5 Examiners of California, that a licensee's license has been placed on probation
6 as a result of a disciplinary action, the department may not reimburse any Medi-
7 Cal claim for the type of surgical service or invasive procedure that gave rise to
8 the probation, including any dental surgery or invasive procedure, that was
9 performed by the licensee on or after the effective date of probation and until the
10 termination of all probationary terms and conditions or until the probationary
11 period has ended, whichever occurs first. This section shall apply except in any
12 case in which the relevant licensing board determines that compelling
13 circumstances warrant the continued reimbursement during the probationary
14 period of any Medi-Cal claim, including any claim for dental services, as so
15 described. In such a case, the department shall continue to reimburse the
16 licensee for all procedures, except for those invasive or surgical procedures for
17 which the licensee was placed on probation.”

18 9. Section 125.3 of the Code provides that a board within the
19 Department of Consumer Affairs may request the administrative law judge to direct a
20 licensee found to have committed a violation or violations of the licensing act to pay a
21 sum not to exceed the reasonable costs of the investigation and enforcement of the case.
22 Pursuant to Section 22 of the Code, the provisions of Section 125.3 apply to the
23 Committee.

24
25 FACTUAL BACKGROUND

26 10. At all times relevant to the Causes for Discipline alleged herein
27 Masood R. Sayyah, M.D. (“Dr. Sayyah”) practiced medicine at Hope Medical Clinic,
28 located at 281 South Columbia Avenue in Los Angeles. At all times relevant to the

1 Causes for Discipline alleged herein Dr. Sayyah employed and supervised Respondent
2 as a physician assistant at Hope Medical Clinic. At all times relevant to the Causes for
3 Discipline alleged herein, the patients to whom reference is made herein were under the
4 care and treatment of Respondent, as well as Dr. Sayyah, who acted through
5 Respondent in the care and treatment of the patients.

6
7 FIRST CAUSE FOR DISCIPLINE

8 (Repeated Negligent Acts)

9 11. Respondent is subject to disciplinary action under sections 2234,
10 subdivision (c), and section 3527, subdivision (a), of the Code; and under section
11 1399.521 of Title 16 of the California Code of Regulations in that he was repeatedly
12 negligent in his care and treatment of patients. The circumstances are as follows.

13
14 Patient Tagoui A.

15 12. Respondent saw Patient Tagoui A.¹ on September 15, 2000,
16 and on March 6, 2001. Patient Tagoui A. was taking Lipitor (20 mg per day) as of
17 September 15, 2000. A lipid profile was done on September 15, 2000, and revealed an
18 elevated cholesterol level. Respondent did not adequately follow-up on this finding of
19 elevated cholesterol level. This failure to perform adequate follow-up constituted a
20 departure from the standard of care.

21 13. As of September 15, 2000, Tagoui A. had diabetes, and was
22 taking Glucophage (850 mg). The treatment of diabetes requires that the patient be
23 monitored on a regular basis. In the medical record for Tagoui A. maintained by Dr.
24 Sayyah and Respondent, there is no mention made of a follow-up plan for the diabetes.
25 It cannot be determined from the record whether the patient's diabetes was controlled or
26

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1. The full names of the patients to whom reference is made herein will be disclosed to
Respondent upon an appropriate request for discovery.

1 not. The failure of Respondent to monitor Tagoui A.'s diabetes constituted a departure
2 from the standard of care.

3
4 Patient John A.

5 14. Patient John A. was seen by Respondent on August 10, 2000,
6 and on February 9, 2001. On both visits, an echocardiogram was ordered. On each
7 occasion the echocardiogram showed abnormalities. Respondent failed to conduct
8 adequate follow-up on these abnormal results. This failure to perform adequate follow-
9 up constituted a departure from the standard of care.

10 15. As of August 10, 2000, John A. had diabetes, and was taking
11 insulin. On August 10, 2000, and February 9, 2001, John A.'s blood sugar was
12 elevated. Respondent failed to adequately follow-up on this patient's diabetes. This
13 failure to perform adequate follow-up constituted a departure from the standard of care.

14
15 Patient Sarkis A.

16 16. Respondent saw Patient Sarkis A. on August 24, 2000, and
17 September 21, 2000. On the first visit, Sarkis A. was found to have mid-epigastric
18 tenderness on physical examination. An abdominal ultrasound was done on August 24,
19 2000, which showed probable gallstones. Other than diagnosing the problem as
20 cholelithiasis, Respondent took no steps to evaluate or treat the patient's abdominal
21 disorder. This failure to take further steps to evaluate and treat constituted a departure
22 from the standard of care.

23 17. Sarkis A. had a 30-year history of diabetes. On August 24,
24 2000, a blood glucose test was performed at the clinic, and showed a level of 175. A
25 urine test done the same day indicated the presence of protein. In this patient, protein in
26 the urine could have been secondary to diabetic nephropathy. The patient's record
27 shows no attempt to adequately evaluate or monitor the patient's diabetes.
28 Respondent's failure to adequately evaluate and monitor Sarkis A.'s diabetes

1 constituted a departure from the standard of care.

2 18. On August 24, 2000, Respondent ordered a VasoSpect (venous
3 flow study) for Sarkis A. The study revealed a normal venous flow pattern in both legs.
4 There was no medical indication for this venous flow study. Ordering the VasoSpect
5 for Sarkis A. without medical indication constituted a departure from the standard of
6 care.

7
8 Patient Milton C.

9 19. Respondent saw Patient Milton C. on August 4, 2000. This 55-
10 year-old male, diabetic patient reported a history of hypertension for 10 years and chest
11 pain on and off for one year. Other than to order an electrocardiogram, Respondent
12 took no steps to evaluate the patient's chest pain. Respondent's evaluation of the
13 patient's complaint of chest pain was inadequate and constituted a departure from the
14 standard of care.

15 20. On August 4, 2000, Respondent ordered an echocardiogram, an
16 electrocardiogram and a VasoSpect study for Milton D. The echocardiogram showed
17 left ventricular hypertrophy. The electrocardiogram showed a first-degree AV block,
18 and was otherwise unremarkable. The VasoSpect study was abnormal for the left lower
19 extremity and normal for the right. Respondent failed to perform adequate follow-up as
20 to the abnormalities found in the echocardiogram, the electrocardiogram, and the
21 VasoSpect. This failure to perform adequate follow-up constituted a departure from the
22 standard of care.

23
24 SECOND CAUSE FOR DISCIPLINE

25 (Gross Negligence)

26 21. Respondent is subject to disciplinary action under sections
27 2234, subdivision (b), and section 3527, subdivision (a), of the Code; and under section
28 1399.521 of Title 16 of the California Code of Regulations in that he was grossly

1 negligent in his care and treatment of Patient Sarkis A. The circumstances are as
2 follows.

3 22. The facts alleged in paragraphs 16 and 17 are re-alleged at this
4 point.

5 23. Respondent's failure to adequately evaluate and monitor Sarkis
6 A.'s diabetes constituted an extreme departure from the standard of care.

7
8 THIRD CAUSE FOR DISCIPLINE

9 (Incompetence)

10 24. Respondent is subject to disciplinary action under sections
11 2234, subdivision (d), and 3527, subdivision (a); and under sections 1399.521 and
12 1399.540 of Title 16 of the California Code of Regulations in that he exhibited
13 incompetence in his treatment of diabetes. The circumstances are as follows.

14 25. The facts alleged in paragraphs 13, 15, and 17 above are re-
15 alleged at this point.

1
2 PRAYER

3 WHEREFORE, Complainant requests that a hearing be held on the
4 matters herein alleged, and that following the hearing, the Physician Assistant
5 Committee issue a decision:

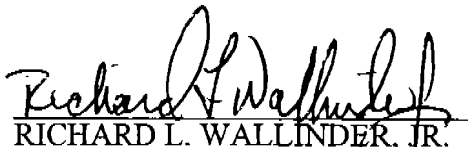
6 1. Revoking or suspending Physician Assistant License Number
7 PA-14826, issued to David Niknia;

8 2. Revoking, suspending or denying approval of David Niknia's
9 authority to supervise physician's assistants, pursuant to section 3527 of the Code;

10 3. Ordering David Niknia to pay the Physician Assistant Committee
11 the reasonable costs of the investigation and enforcement of this case, and, if placed on
12 probation, the costs of probation monitoring;

13 4. Taking such other and further action as deemed necessary and
14 proper.
15

16 DATED: October 29, 2003
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18 
19 RICHARD L. WALLINDER, JR.
20 Executive Officer
21 Physician Assistant Committee
22 Department of Consumer Affairs
23 State of California
24 Complainant
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